IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO. 931/1999

HABIBULLAH KHAN Vs THE STATE OF RAJASTHAN & ORS.

Date: 05.12.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Intizar Ali for the petitioner.
Mr. B.S. Chhaba, Addl. GA for the State.

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The short controversy in this writ petition is that the representation filed by the petitioner has been rejected vide order dated 27.10.98 and the candidature of the petitioner has been rejected on the ground that the petitioner after acquiring higher education, has passed the Secondary Examination in the year 1998 and thus, the candidature of the petitioner has been rejected for the post of Physical Teacher Grade-III.

Learned counsel for the petitioner has placed reliance on the judgment rendered by the Division Bench of this Court in the case of ***Surender Kumar And Others Vs. The State of Rajasthan And Another, decided on 30.08.2001 and reported in 2002(1) WLC(Raj.) 337,*** wherein the Division Bench has held that “there is

nothing sacrocent about the first attempt at the examination. For various reasons and fortuitous circumstances, a candidate otherwise meritorious, may not score well in the first attempt or might be suffering from any other handicap, which might have undermined his performance. The employer is concerned with the current merit of the candidates to be employed and not their past performance. We, therefore, see no justification in the government's decision discontinuing the earlier practice of counting the marks obtained at the subsequent examination taken for improvement of marks."

Here in the instant case also, the petitioner appeared for improvement and improved the marks and rejecting the representation of the petitioner to consider his candidature for the post of Physical Teacher Grade-III, is contrary to the ratio decided by the Division Bench in the aforementioned case.

Thus, in view of ratio decided by the Division Bench of this Court in the aforementioned case of ***Surender Kumar And Others (supra),*** the writ petition stands allowed and the respondents are directed to consider the case of the petitioner considering the marks secured in the subsequent examination taken for improvement of marks and if the petitioner is otherwise

found eligible, he may be given appointment on the post of Physical Teacher Grade-III as per the provisions of law.

(K.S. RATHORE),J.

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